

Appendix B:

Administrative Subpoena Authorities Held by the
Department of Justice

Accompanying a
Report to Congress on the
Use of Administrative Subpoena Authorities
by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

Appendix B

Administrative Subpoena Authorities Held by the Department of Justice P.L. 106-544, Section 7(a), Executive Branch Study on Administrative Subpoena Authority, Scope and Protections

*Denotes Administrative Law Judge Authority

<i>Name of Agency or Entity</i>	<i>Source and Common Name of Authority (Including Act Name, P.L. and USC & CFR cites)</i>	<i>Scope of Authority Description</i>	<i>Enforcement Mechanism Description</i>	<i>Notification Req. and Privacy Protections</i>	<i>Issuance Standards and Qualifiers or Procedures</i>
Department of Justice (Antitrust Division):	Civil Investigative Demand (CID) authority under the Antitrust Civil Process Act, 15 U.S.C. §§1311-1314	When the Attorney General or the Assistant Attorney General in charge of the Antitrust Division has reason to believe that any person may be in the possession, custody or control of any documentary material or have any information relevant to a civil antitrust investigation he may, prior to the institution of a proceeding, issue in writing and serve upon that person a civil investigative demand.	Whenever a person fails to comply with any CID, the DOJ may file in U.S. District Court and serve upon such person a petition for an order of such court for the enforcement of the CID. A CID recipient may file in U.S. District Court and serve upon the DOJ a petition for an order modifying or setting aside such CID. In general, the Federal Rules of Civil Procedure apply to such petitions.	CIDs may be served by any antitrust investigator, or by any U.S. marshal, at any place within the territorial jurisdiction of any court of the U.S. CID materials are exempt from FOIA and, without the consent of the CID recipient, may only be used by a duly authorized official, employee, or agent of the DOJ (or FTC) in connection with a case, grand jury, or Federal administrative or regulatory proceeding. Right to Financial Privacy Act, 12 U.S.C.	No CID may require the production of material that would be protected from disclosure under the standards applicable to subpoena issued by a court of the U.S. in aid of a grand jury investigation or the standards applicable to discovery requests under the Federal Rules of Civil Procedure. CIDs must be approved by the AG or AAG for Antitrust: approval authority may not be delegated.

				§§3401-3422, provides for notification to customers for financial records.	
Department of Justice (Antitrust Division):	<p>“Second Request” authority under the Hart-Scott-Rodino Antitrust Improvements Act of 1976: Section 7A of the Clayton Act, 15 U.S.C. 18a as amended by Section 630 of Pub.L. No. 106-553, 114 Stat. 2762(2000). The authority to issue second requests is found in 15 U.S.C. 18a(c). Rules implementing the Act are found at 16 C.F.R. Part 801 et seq. See 16 C.F.R. 803.20 (“Requests for additional information or documentary material”)</p>	<p>Certain mergers and acquisitions may not be consummated until the parties provide DOJ and the FTC with premerger notification and observe a waiting period. During that waiting period, either DOJ or the FTC “may require the submission of additional information or documentary material relevant to the proposed acquisition” from the parties. (This is referred to as issuing a “second request.”)</p>	<p>The premerger waiting period is extended by issuance of a second request and continues to run until after (generally 30 days after) compliance. The Antitrust Division has instituted an Internal Appeal Procedure that enables a party to contest the breadth of a second request or whether there has been compliance. See http://www.usdoj.gov/atr/public/8340.htm. Under 15 U.S.C. 19a(g)(2), if a party fails substantially to comply with a second request, a district court may order compliance, extend the waiting period until there has been compliance, and grant other equitable relief.</p>	<p>A party filing a premerger notification designates a person who is to receive notice of issuance of a second request. 15 U.S.C. 18a(b) provides that any information or documentary material pursuant to 15 U.S.C. 18a shall be exempt from FOIA and may be relevant to any administrative or judicial action or proceeding. If a party refuses to produce certain documents based on privilege claims, it must submit a privilege log (see 17 C.F.R. 803.3).</p>	<p>If the staff investigating a transaction concludes that it might raise competitive problems, the staff drafts a second request. The Division utilizes centralized high-level review of second requests prior to issuance, with a focus on eliminating undue burden. The Division recently announced details of its Merger Review Process Initiative. The Initiative encourages staff to be as aggressive as possible during the initial waiting period by making voluntary requests from information and through early consultation with the parties, and to use the knowledge thereby gained to tailor Second Requests as</p>

					narrowly as possible to the transaction and the goals of the investigation.
Department of Justice (Child Exploitation & Obscenity Section, Criminal Division):	Title 18 U.S.C. 348(a)(1)(A)(i)(II), (a)(1)(C)	Authority provides the Attorney General or the Attorney General's designee authority to issue administrative subpoenas for a limited category of information in criminal investigations of specified federal kidnaping, child pornography, sex abuse and transportation for illegal sexual activity offenses, where the victim was under eighteen. The statute includes the following requirements: (1) the underlying investigation has to relate to an act or activity involving a violation of Sections 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of Title 18, United States Code, when the victim was a minor who had not attained the age of	Title 18 U.S.C. 3486(c) permits the Attorney General to invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena.	Title 18 U.S.C. 2703(c)(2) provides that a governmental entity receiving records from a provider of electronic communications service or remote computing service pursuant to an administrative subpoena requesting the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identify, and length and type of service does not have to provide notice to subscriber or customer.	See procedures set out by FBI Crimes Against Children Unit. FBI issues these subpoenas pursuant to AG delegation order.

		<p>eighteen years: (2) the subpoena can be issued only to a provider of an electronic communication service or remote computing service: (3) the provider can be required to disclose only the subscriber or customer's : (a) name;(b) address; (c) local and long distance telephone toll billing records; (2) telephone number or other subscriber identity; (e) length of service; and (f) the types of services the customer or subscriber utilized, which may be relevant to an authorized law enforcement inquiry; and (4) the authority to issue administrative subpoenas to obtain testimony is limited to requiring a custodian of records to give testimony concerning the production and authentication of such records. The Attorney General has delegated the administrative subpoena power to all</p>			
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		<p>United States Attorneys, the Assistant Attorney General in charge of the Criminal Division, and the Director of the Federal Bureau of Investigation. This authority may be redelegated to Assistant U.S. Attorneys, Criminal Division trial attorneys, and FBI Special Agents in Charge, Assistant Special Agents in Charge and Senior Supervisory Resident Agents in Charge.</p>			
<p>Department of Justice Justice (Commercial Litigation Branch, Civil Division):</p>	<p>False Claims Act (FCA), Publ. L. 99-562 §6(a) (Oct. 27, 1986), 31 U.S.C. §3733.</p>	<p>1) The Attorney General is authorized to issue a civil investigative demand (CID) for documentary material, interrogatory answers, and/or oral testimony that is relevant to “a false claims law investigation.” See 31 U.S.C. §3733(a)(1). 2) A “false claims law investigation” includes an inquiry under the FCA or any</p>	<p>1) The Attorney General may enforce a CID by filing a petition for enforcement in any judicial district in which the non-complying person resides, is found, or transacts business, see 31 U.S.C. §3733(j)(1). 2)The recipient of a CID may object by filing a petition to modify or set aside the CID in any judicial</p>	<p>1) Information obtained by a CID may not be disclosed, except to certain designated parties. These parties include: (a) any Justice Department (DOJ) attorney or investigator conducting a “false claims law investigation;” (b) any DOJ attorney requiring such information in connection with a case or proceeding; (c) Congress or any</p>	<p>1) The Attorney General must authorize each CID and may not delegate this function. See 31 U.S.C. §3733(a)(1), (a)(2)(G). 2) A CID for materials must state: (a) the alleged conduct and false claims law provision under investigation; (b) the specific class of materials to be produced; (c) the date</p>

		<p>act of Congress enacted after October 27, 1986 that prohibits false claims, bribery, or corruption involving an officer or employee of the United States. See 31 U.S.C. § 3733(I)(1)-(2).</p>	<p>district where the person resides, is found, or transacts business. See 31 U.S.C. § 3733(j)(2).</p>	<p>committee or subcommittee thereof; (d) other federal agencies upon a showing of “substantial need;” and, (e) any other officer or employee of the United States authorized under regulations to be issued by the Attorney General. See 31 U.S.C. §3733(i)(2)-(3). 2) Where a CID seeks any product of discovery, a copy of the CID must be sent to the person from whom the discovery was obtained, and the CID is not returnable for at least 20 days. See 31 U.S.C. §3722(a)(1), (a)(2)(D). 3) Upon completion of the “false claims law investigation,” and any subsequent case or proceeding, any documentary materials obtained by CID must be returned to the party producing them. See 31 U.S.C. §3733(i)(4).</p>	<p>the materials are due; and (d) the false claims law investigator to whom the materials should be provided 31 U.S.C. §3733(a)(2)(A)-(B). 3) A CID for answers must state: (a) the alleged conduct and false claims law provision under investigation; (b) the specific interrogatories to be answered; (c) the date the answers are due; and (d) the false claims law investigator to whom the answers should be provided. 31 U.S.C. §3733(a)(2),(A), (a)(2). 4) A CID for oral testimony must state: (a) the alleged conduct and false claims law provision under investigation; (b) the general nature of the testimony to be provided; (c) the place, date and time for the testimony; (d) the false claims law investigator who will</p>
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					<p>conduct the examination; (e) that the person's attendance is necessary to the investigation; and, (f) that the person may be accompanied by an attorney and any other representative. See 31 U.S.C. § 3733(a)(2)(A), (a)(2)(D). 5) The Attorney General must appoint a custodian to receive and to implement the confidentiality restrictions covering any materials, answers, or transcripts obtained pursuant to a CID. See 31 U.S.C. §3733(i)(1).</p>
<p>Department of Justice (Fraud Section, Criminal Division; Federal Bureau of Investigation [FBI]):</p>	<p>18 U.S.C. §3486, as originally enacted by the Section 248a of the Health Insurance Portability and Accountability Act of 1996, Pub.L.104-191.</p> <p>[Since 1996, Section 3486 has been subjected to a series of amendments which</p>	<p>In any criminal investigation of a "federal health care offense" (which are enumerated in 18 U.S.C. §24), the Attorney General may issue in writing and serve, a subpoena requiring production or testimony. §3486 (a)(1)(A). At any time</p>	<p>In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may move in any district court where the investigation is carried on, or of which the subpoenaed person is an inhabitant or does</p>	<p>I. No notification requirements. May obtain an ex parte order preventing the disclosure of the existence of the summons for 90 days, renewable for additional 90 day periods for reasons listed in §3486(a)(6)(B). Health</p>	<p>I. The subpoena can require: 1) production of records or other things relevant to the investigation 2) testimony of the custodian of the records or other things required to be produced concerning the production and authenticity of those</p>

	<p>expanded the reach of administrative subpoenas to other areas of law: the sexual exploitation of children, and the protective services provided by the Secret Service to the President and others. For example, in 1998, §3486 was enacted to grant the Attorney General additional administrative subpoena power, in cases involving the sexual exploitation of children. Pub. L. 105-314, §606(a)(2). Then in 2000, the provisions of §3486A were folded into §3486, which was further revised to extend administrative subpoena authority to the Secretary of the Treasury, to investigate threats against the President, the President-elect, or former Presidents, and threat against person receiving protective services from the Secret Service. Pub. L. 106-544 § 5(a),(b)(1)</p>	<p>before the return date, the person or entity subpoenaed may petition for an order modifying or quashing the summons. Motion shall be made in the U.S. District Court in which the person or entity resides or does business. §3486(a)(5).</p> <p>The Attorney General has delegated authority to the Assistant Attorney General for the Criminal Division and the United States Attorneys to issue administrative subpoenas for health care fraud offense investigations. These subpoenas may be issued by these officials or their designees on their own initiative, or in response to the request of investigative agencies, such as the FBI.</p>	<p>business, or may be found, to compel compliance with the subpoena. §3486(c).</p>	<p>information obtained under this section “may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health” or if authorized by a court of competent jurisdiction. §3486(e).</p> <p>II. Executive Order No. 13181, 65 Fed. Reg. 81321 (Dec. 30, 2000). The Executive Order, titled “To Protect the Privacy of Protected Health Information in Oversight Investigations,” provides U.S. government policy concerning protected health information discovered during the</p>	<p>things. §3486(a)(1)(B)</p> <p>II. The subpoena shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available. §3486(a)(2).</p> <p>III. The production of records relating to a Federal health offense shall not be required more than 500 miles from the place where the subpoena is served. §3486(a)(3).</p> <p>IV. Witnesses shall be paid the customary fees for witnesses in U.S. Courts. §3486(a)(4).</p> <p>V. Major cases interpreting the use of subpoenas under §3486 for the investigation of Federal Health Care Offense:</p>
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	and (c).]			<p>course of health oversight activities.</p> <p>III. The disclosure of medical records of substance abuse patients is strictly limited by operation of 42 U.S.C. §290dd-2.</p> <p>IV. Subpoenas issued under §3486 in the course of investigations of Federal health care offenses are subject to all other limitations placed on the production of evidence pursuant to compulsory process, for example:</p> <p>a) The Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u>, the Right to Financial Privacy Act (RFPA). The RFPA authorizes the use of administrative subpoenas as a method to obtain from financial institutions the financial records of the customers of those institutions. §§3402(2) and 3405. Various provisions provide for</p>	<p>In re Subpoena Duces Tecum (Bailey, 228 F.3d 341 (4th Cir. 2000)</p> <p>In re Administrative Subpoena John Doe, 253 F.3d 256(6th Cir. 20001).</p> <p>FBI requests for issuance by U.S. Attorneys' Office are governed by the general guidelines on investigation found in:</p> <ol style="list-style-type: none"> 1. Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (March 21, 1989). 2. Internal FBI regulations found in the Manual of Investigative Operations and Guidelines (MIOG), Part II, 10-8.2(1), "Access to Transactional Information: Telephone Toll
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				<p>notification to the customer and limit disclosure of the financial information, except where prohibited by this or another federal statute.</p> <p>b) 5 U.S.C. §552a (Privacy Act): No disclosure is permitted without the prior written consent of the person to whom the record pertains, unless permitted by one of twelve exceptions; regulations are found at 28 C.F.R. Part 16, Subpart D.</p> <p>c) 5 U.S.C. §552(b) (Freedom of Information Act exemptions). Regulations at 28 C.F.R. Part 16, Subpart A.</p> <p>d) Protection of Cable Subscriber Privacy, 47 U.S.C. §55.</p> <p>e) Wrongful Disclosure of Video Tape Rental or Sale Records, 18 U.S.C. §2710.</p>	<p>Records, Subscriber Listing Information.”</p> <p>Very useful for obtaining documents during health care fraud investigations.</p>
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				f) 42 U.S.C. §2000aa-11(a) (“Guidelines for Federal offices and employees”), when documents are in the possession of third parties. Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”).	
Department of Justice (Fraud Section, Criminal Division):	15 U.S.C. 78dd-2 Foreign Corrupt Practices Act (FCPA) (prohibited foreign trade practices by domestic concerns)	For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence	In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney		The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection. 15 U.S.C. §78dd-2(d)(4). All process in any such case may be served in the judicial district in which such person resides or may be found. 15 U.S.C. §78dd-2(d)(3)

		<p>may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.</p> <p>15 U.S.C. §78dd-2(d)(2).</p>	<p>General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.</p> <p>15 U.S.C. §78dd-2(d)(3).</p>		
<p>Department of Justice (Fraud Section, Criminal Division):</p>	<p>15 U.S.C. 78dd-3</p> <p>Foreign Corrupt Practices Act (prohibited foreign trade practices by persons other than issuers or domestic concerns)</p>	<p>For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The</p>	<p>In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an</p>		<p>All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.</p> <p>15 U.S.C. 78dd-3(d)(5).</p>

		<p>attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.</p> <p>15 U.S.C. 78dd-3(d)(2).</p>	<p>order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.</p> <p>15 U.S.C. 78dd-3(d)(3).</p>		
<p>Department of Justice (Organized Crime and Racketeering Section, Criminal Division):</p>	<p>Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. §1968</p>	<p>“Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding, issue a written demand “requiring such person to produce such material for</p>	<p>The Attorney General “may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business,” a petition to enforce the civil investigative demand. 18 U.S.C. §1968(g).</p> <p>None.</p>	<p>Issuance of a Civil Investigative Demand must be approved by the Organized Crime and Racketeering Section and either the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General or any employee designated by the Attorney General, 18 U.S.C. §§ 1961(10) and 1968. “No such demand shall - (1) contain any requirement</p>	

		examination.” 18 U.S.C. §1968(a).		which would e held to be unreasonable if contained in a subpoena duces tecum”... or “require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum.” 18 U.S.C. § 1968(c).	
Department of Justice (Drug Enforcement Administration [DEA]):	21 U.S.C. §876(a)	21 U.S.C. 876(a) provides that: “[i]n an investigation relating to his functions under this subchapter with respect to controlled substances, listed chemicals, tableting machines, or encapsulating machines, the Attorney General may subpoena witnesses, compel the attendance and testimony of witnesses and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds	To enforce an administrative subpoena served under 21 U.S.C. §876, the Attorney General “May invoke the aid of any court of the United States...The court may issue an order requiring the subpoenaed persons to appear before the Attorney General to produce records, if so ordered, or to give testimony...Any failure to obey the order of the court may be punished by the court as a contempt thereof.” 21 U.S.C. §876(c).	The DEA Agents Manual (Am) explains that certain types of information otherwise subject to DEA’s administrative subpoena power are protected from disclosure. The AM contains a detailed explanation of the Right to Financial Privacy Act (RFPA), which limits the disclosure of financial information by financial institutions, Under the RFPA, DEA may use an administrative subpoena to obtain the name, address, account numbers and types of accounts of a customer of a financial institution without providing	The Attorney General can issue administrative subpoenas to obtain testimony or materials that he finds “relevant or material to” and investigation, 21 U.S.C. §876. The AM states that the subpoena powers provided in the Controlled Substances Act “will be used judiciously and with appropriate restraint.” AM §6614.23. The AM also states that subpoenas should be used primarily for obtaining information or documents from business entities. The AM directs employees

		<p>relevant material to the investigation. The subpoena may be used to compel the attendance and testimony of witnesses, and require the protection of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant material to the investigation.” The Attorney General has delegated all functions vested in him by Controlled Substances ACT (CSA) to the DEA Administrator, 28 C.F.R. §0.100, Subpart R. DEA’s Administrator has redelegated his authority to issue administrative subpoenas to the following DEA personnel: Chief Inspector; The Deputy Chief Inspector and Associate Deputy Chief Inspector of DEA’s Office of</p>		<p>notice to the customer. In order to obtain any other information, however, DEA must notify the customer by personal service or by mailing a copy of the subpoena to his last known address. The customer is given ten days from personal service or fourteen days from mailing to contest the action. The only means of avoiding prior notification is by obtaining a court order delaying notification for an initial 90 days, with extensions in 90-day increments. The delay order may be obtained where there is a “reasonable belief” that notification would 1) endanger the life or physical safety of any person 2) result in flight from prosecution 3) result in the destruction or tampering with evidence 4) result in the intimidation of a potential witness</p>	<p>-serving an administrative subpoena to have due regard for the convenience of the person or entity served, and, insofar as possible, to permit compliance in a manner preferable to them.</p>
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		<p>continuing investigation and were not running to indicted individuals); United States v. Mountain States Telephone and Telegraph Company, 516 F. Supp. 225 (D. Wyo. 1981) (issuance of subpoena by Special Agent in Charge of DEA office was legitimate exercise of authority provided to him); United States v. Hossbach, 518 F. Supp. 759 (E.d. Pa. 1980) (use by DEA of administrative subpoenas in conducting criminal investigation was valid.)</p>		<p>subscriber number or identify, and means and source of payment for such service (including any credit card or bank account number) of a subscriber. Other records pertaining to the subscriber, including audit trails/logs, web sites visited and identities of email correspondents, can only be obtained by search warrant or court order. With prior notice to the subscriber. DEA can also use an administrative subpoena to obtain unopened e-mail (in storage more than 180 days) or opened email still on the provider's system. The notice may be delayed for 90 days under the same criteria listed above for information protected by the RFPA. Unopened e-mail storage 180 days or less can only be obtained by serving a search warrant.</p>	
Department of	18 U.S.C. §3486,	The Attorney General	The Attorney General	No notification	The subpoena issued

<p>Justice (Federal Bureau of Investigation [FBI]):</p>	<p>Presidential Threat Protection Act of 2000, Pub. L. No. 106-544, 114 Stat. 2717, 1718 (2000).</p>	<p>is authorized to issue administrative subpoenas for a federal offense involving the sexual exploitation or abuse of children. §3486(a)(1)(A)(i)(II).</p> <p>The Attorney General delegated his authority to “issue and cause to be served administrative subpoenas” to the Director, FBI, by Order No. 2421-2000, dated 4/05/2001. The Order provided that the Director may redelegate his authority to Special Agents in Charge (SACs), Assistant Special Agents in Charge (ASACs), and Senior Supervisory Resident Agents (SSRAs), as the Director “deems appropriate.” The redelegation occurred on 5/31/2001.</p>	<p>may request an order from the district court in the district in which the investigation occurs or in which the subpoenaed person resides to compel compliance with the subpoena. Failure to comply with the court order may be punished by the court as contempt. §3486(c).</p>	<p>requirements. See 18 U.S.C. §2703(c)(2).</p> <p>May obtain an ex parte order preventing the disclosure of the existence of the summons for 90 days, renewable for additional 90 day periods for reasons listed in §3486(a)(6)(B) and (C).</p> <p>Privacy protection required under other statutes and regulations:</p> <p>5 U.S.C. §552a (Privacy Act): No disclosure is permitted without the prior written consent of the person to whom the record pertains, unless permitted by one of twelve exceptions; regulations are found at 28 C.F.R. Part 16, Subpart D.</p> <p>5 U.S.C. §552(b) (Freedom of Information Act exemptions). Regulations at 28 C.F.R. Part 16, Subpart</p>	<p>under this statute allows production of records, other relevant items, or telephone toll records. Or, in the alternative, the custodian of those records or other relevant items may be subpoenaed to address their production and authenticity.</p> <p>The subpoena may require: (1) the production of records or other things relevant to the investigation and the testimony of the custodian of the things to be produced about their production and authenticity, §3486(a)(1)(B); or (2) when directed to a provider of electronic communication service or remote computing service, the subpoena may require that the provider disclose only: the name, address, local and long distance telephone toll billing records, telephone</p>
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				<p>A.</p> <p>42 U.S.C. §2000aa-11(a) (“Guidelines for Federal officers and employees”), when documents are in the possession of third parties. Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”).</p> <p>20 U.S.C. § 1232g(b) (the Family Educational Rights and Privacy Act of 1974 (FERPA) (the Buckley Amendment). Regulations are found at 34 C.F.R. Part 99. The Buckley Amendment permits a federal government entity (e.g., the FBI) to obtain education records, as defined in and protected by the statute (other than unprotected directory information) from an educational institution that receives federal funds. The parents and the student must be notified in advance that</p>	<p>number or other subscriber number or identity, and the length of service of a subscriber to or customer of such service, and the types of services the subscriber or customer utilized which may be relevant to a law enforcement inquiry, §3486(a)(1)(C)(i); or require the custodian of records for that provider to testify as to the production and authentication of the records or information §3486(a)(1)(C)(ii). Use is governed by the general guidelines on investigation found in:</p> <ol style="list-style-type: none"> 1. Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigation (March 21, 1989). 2) Internal FBI regulations found in the Manual of Investigative Operations and
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				<p>the educational agency or institution will comply with the subpoena. §1232g(b)(2)(B). A court (or other issuing agency) may order nondisclosure to any person of the contents of or the existence of the subpoena or nondisclosure of the information furnished “for good cause shown,” §1232g(b)(1)(J).</p>	<p>Guidelines (MIOG), Part II, 10-8.2(1), “Access to Transactional Information: Telephone Toll Records, Subscriber Listing Information;” MIOG, part I, 7-20, “Administrative Subpoenas in Child Abuse and Child Sexual Exploitation Cases” (publication of section 7- 20 is pending revision reflecting amendments to 18 U.S.C. §3486(a) by Pub.L. No. 106-544).</p> <p>Statute prohibits production of records beyond a distance of 500 miles from the place where the subpoena was served. §3486(a)(3).</p> <p>45 C.F.R. § 164.512(f) This regulation provides the minimum circumstances under which law enforcement can obtain medical records from health care</p>
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					providers by administrative subpoena if the requested information is: specific and limited in scope, relevant and material to a legitimate law enforcement inquiry, and if de-identified information cannot be used. If state law is more stringent, state law applies.
Department of Justice (Federal Bureau of Investigation [FBI]):	21 U.S.C. §876, Comprehensive Drug Abuse Prevention and Control Act of 1970, commonly called the “Controlled Substances Act,” Pub. L. No. 91-513, Title II, 84 Stat. 1242, 1272 (1970).	The Attorney General “may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation.” §876(a). By Order No. 968-82, dated 1/28/82, reprinted at 47 Fed. Reg. 4989-01 (2/3/82), the Attorney General	The Attorney General may request an order from the district court in the district in which the investigation occurs or the subpoenaed person resides to compel compliance with the subpoena. Failure to comply with the court order may be punished by the court as contempt. §876(c).	12 U.S.C. §3401 <u>et seq.</u> , the Right to Financial Privacy Act (RFPA). [The RFPA authorizes the use of administrative subpoenas as a method to obtain from financial institutions the financial records of the customers of those institutions. §§3402(2) and 3405. Various provisions provide for notification to the customer and limit disclosure of financial information, except where permitted by this or another federal statute.]	Relevance or materiality to the investigation is required for issuance of the subpoena. §876(a). The subpoena may require attendance of witnesses and production of records at any designated place of hearing from any place in any state or from any place or territory subject to United States jurisdiction. §876(a). 42 U.S.C. §2000aa-11(a) (“Guidelines for Federal officers and employees”), when

		<p>authorized the Director, FBI, to investigate criminal law violations and granted him authority concurrent with that of the Administrator, Drug Enforcement Administration (DEA). See 28 C.F.R. §0.85(a). The Director, FBI, has redelegated his authority to issue administrative subpoenas to all Special Agents in Charge (SACs), Assistant Special Agents in Charge (ASACs), and Supervisory Senior Resident Agents (SSRAs) (28 C.F.R. App. To Subpart R, sec. 4) and to supervisors of drug investigation squads (pending publication in the Federal Reg. by DEA).</p>		<p>18 U.S.C. §2701 <u>et seq.</u>, the Electronic Communications Privacy Act (ECPA), as amended by Pub. Law No. 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001. [ECPA, in relevant part, authorizes a governmental entity (e.g., the FBI) to require a provider of a remote computing service to disclose to that entity, the contents of any wire or electronic communication in a remote computing service by use of an administrative subpoena if prior notice is given to the subscriber or customer. §2703(b)(1)(B)(i). Delayed notice is available under §2705. ECPA also authorizes a governmental entity (i.e., the FBI) to require a provider of electronic</p>	<p>documents are in the possession of third parties. Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”).</p> <p>Use governed by the general guidelines on investigation found in:</p> <ol style="list-style-type: none"> 1. Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (March 21, 1989). 2. Internal FBI regulations found in the Manual of Investigative Operations and Guidelines (MIOG), Part I, 281-7 through 281-7.4 (“Administrative Subpoenas”); Part II, 10-8.1, “Contents of Electronic Communications in Electronic Storage and Part II, 10-8.2(1), “Access to
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				<p>communication service or remote computing service to disclose to that entity the name, address, local and long distance telephone connection records or records of session times and durations, telephone or instrument numbers or other subscriber number or identity, and length of service of a subscriber to or customer of such services and the types of service the subscriber or customer used, as well as means and source of payment for such service, including any credit card or bank account number. §2703(c)(2). No notice to the customer is required. §2703(c)(3), formerly, §2703(c)(1)(C).]</p> <p>20 U.S.C. §1232g(b) (the Family Educational Rights and Privacy Act of 1974 (FERPA) (the Buckley Amendment). Regulations are found at 34 C.F.R. Part 99. [The Buckley</p>	<p>Transactional Information: Telephone Toll Records, Subscriber Listing Information,”</p> <p>Necessary to fulfill responsibilities under 28 C.F.R. §0.85(a) to investigate violations of the controlled substance laws.</p>
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				<p>Amendment permits a federal government entity (e.g., the FBI) to obtain education records, as defined in and protected by the statute (other than unprotected directory information) from an educational institution that receives federal funds. The parents and the student must be notified in advance that the educational agency or institution will comply with the subpoena.</p> <p>§1232g(b)(2)(B). A court (or other issuing agency) may order nondisclosure to any person of the contents of or the existence of the subpoena or nondisclosure of the information furnished “for good cause shown.”</p> <p>§1232g(b)(1)(J).]</p>	
<p>Department of Justice (Immigration and Naturalization Service [INS]):</p>	<p>Immigration and Nationality Act (INA) §235(d)(4); 8 U.S.C. §1225(d)(4)</p>	<p>“The Attorney General and any immigration officer shall have power to require by subpoena the attendance and</p>	<p>“Any U.S. district court within the jurisdiction of which the investigations or inquiries are being conducted... may, in</p>	<p>12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”)</p>	<p>1) Documents to be produced must be described with definiteness and reasonable time to produce must be</p>

		<p>testimony of witnesses before immigration officers and the production of books, papers, and documents related to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.”</p> <p>[The Attorney General and Immigration officers may require by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents related to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the</p>	<p>the event of neglect or refusal to testify before an immigration officer, issue an order, requiring such persons to appear before an immigration officer, produce books, paper, and documents, if demanded, and testify, and any failure to obey such order of the court may be punished by the court as contempt thereof.”</p>		<p>allowed;</p> <p>2) Interrogation of subpoenaed person to be confined to scope of proceedings involved;</p> <p>3) Prerequisite for issuance-reasonable basis for belief that INA violation occurred. Sources: INS Operating Instructions (“OI”) 287.4; Investigations Handbook §3-3.9.</p>
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		enforcement of this Act and the administration of the Service.]			
Department of Justice (Immigration and Naturalization Service [INS]):	INA §274A(e)(2)(C); 8 U.S.C. § 1324a(e)(2)(C); 8 C.F.R. § 274a2(b)(2)(B)(ii) This section also provides for issuance of subpoenas by ALJs in formal proceedings initiated by the Service. Cf. Also 274B(f)(2).	“In conducting investigations and hearings under this subsection, immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).”	“In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph... an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.”	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”).	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed; 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved. 3) Consultation with U.S. Attorney or INS Attorney advised before seeking subpoena issuance. Sources: OI 287.4; Special Agents Field Manual, 33.30(a)(1).
Department of Justice (Immigration and Naturalization Service [INS]):	INA § 274C(d)(1)(C); 8 U.S.C. §1324c(d)(1)(C); 8 CFR §270.2(C)	“In conducting investigations and hearings under this subsection, immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place	“In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph... an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”).	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed; 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved;

		prior to the filing of a complaint in a case under paragraph (2).”	order may be punished by such court as a contempt thereof.”		3) Prerequisite for issuance-reasonable basis for belief that INA violation occurred. Sources: INS Operating Instructions (“OI”) 287.4; Investigations Handbook §3-3.9.
Department of Justice (Immigration and Naturalization Service [INS]):	INA §287(a); 8 U.S.C. § 1357(a); 8 C.F.R. §287.4.	“Under any regulations prescribed by the Attorney General, an officer or employee of the Service may ... execute and serve any order, warrant, subpoena, subpoena, summons, or other process issued under the authority of the United States.”	“The officer requesting the subpoena shall request the U.S. Attorney for the district in which the subpoena was issued to report negligence or refusal to appear and testify to the U.S. district Court and to request such court to issue an order requiring the witness to appear and to testify and to produce the books, paper or documents designated in the subpoena.”	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”)	The subpoena “shall command the person or entity to which it is address to attend and to give testimony at a time or place specified... shall also command the person or entity to which it is addressed to produce the books, papers, or documents specified in the subpoena... may direct the taking of a deposition before an officer of the Service.” 8 CFR §287.4(b)(1),(2). Regulation also lists official authorized to issue subpoenas.** **Officials Authorized to issue subpoenas: District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief

					Patrol Agents, Officers-in Charge, Patrol Agents in Charge, Assistant Directors for Investigations, Supervisory Criminal Investigators (Anti-Smuggling), Regional Directors, Service Center Directors, Assistant Directors for Examinations.
Department of Justice (Immigration and Naturalization Service [INS]):	INA §335(b); 8 U.S.C. §1446(b); 8 C.F.R. §§336.2(d)(1), 335.11	“The Attorney General shall designate employees of the Service to conduct examinations upon applications for naturalization. For such purposes any such employee so designated is hereby authorized to... require by subpoena the attendance and testimony of witnesses, including applicant, before such employee so designated and the production of relevant books, papers, and documents...”	“Any district court of the United States may, “in the event of neglect or refusal to respond to a subpoena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded and testify; and any failure to obey such order of the court may be punished by the court	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act:)	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed: 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved. Sources: OI 287.4.

			as contempt thereof”		
Department of Justice (Immigration and Naturalization Service [INS]):	INA §336(d); 8 U.S.C. 1447(d)	“The immigration officer shall, if the applicant requests it at the time of filing the request for the hearing, issue a subpoena for the witnesses named by such applicant to appear upon the day set for the hearing, but in case such witnesses cannot be produced upon the hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe.”	Such subpoenas may be enforced in the same manner as subpoenas under section 335(b) (see above provision)	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”)	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed; 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved. Sources: OI 287.4.
Department of Justice (Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer [EOIR]):*	INA, 8 U.S.C. §1324a(e)(2)(b); 8 U.S.C. §1324b(f)(2); 8 U.S.C. §1324c(d)(1)(B); 28 C.F.R. §68.25; 28 C.F.R. §68.28(a)(4). Administrative Hearing Subpoenas.	Upon application of a party or by the Administrative Law Judge’s (ALJ) order, the ALJ may compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.	An Administrative Law Judge may apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena. 28 C.F.R. §68.25(e).	None.	A party must make a showing of general relevance of the evidence or testimony sought in the subpoena. The subpoena is used to obtain evidence or testimony in a determination of whether a violation under the Immigration Act has occurred.

<p>Department of Justice (Executive Office for Immigration Review, Office of the Chief Immigration Judge [EOIR]):</p>	<p>INA, 8 U.S.C. §1229(b)(1); 8 C.F.R. §3.35(b)(1).</p> <p>Administrative Hearing Subpoenas.</p>	<p>“Upon being satisfied that a witness will not appear and testify or produce documentary evidence that is essential, the Immigration Judge shall issue a subpoena..” 8 C.F.R. §3.35(b)(3)</p>	<p>“If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the Immigration Judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and to testify and to produce the [documents] designated in the subpoena.” 8 C.F.R. §3.35(b)(6)</p>	<p>None.</p>	<p>A party must make a showing of general relevance of the testimony or other evidence sought. The subpoena is used to obtain evidence or testimony in the adjudication of an application for relief under the Immigration and Nationality Act.</p>
<p>Department of Justice (Office of Inspector General):</p>	<p>Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, Section 6(a)(4). (authority limited in regard to subpoena of certain sensitive information under id. At Section 8E.)</p>	<p>“Production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the</p>	<p>“In the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United states district court.” Id.</p>	<p>Right to Financial Privacy Act, 12 U.S.C. §340 <u>et seq.</u></p> <p>Fair Credit Reporting Act, 15 U.S.C. §1681.</p> <p>Access to Tax Return Information, 26 U.S.C.</p>	<p>“The Inspector General acts under the “authority, direction and control” of the Attorney General with respect to issuance of subpoenas, which require access to sensitive information</p>

		<p>functions assigned by [the IG Act]... procedures other than subpoena shall be used by the Inspector General to obtain documents and information from Federal agencies.” Id.</p>		<p>§6103. Individually Identifiable Health Information, 45 C.F.R. §§160, 164 (not yet in effect) Substance Abuse and Mental Health Information 42 C.F.R. Part 2 Electronic Communication Privacy Act 18 U.S.C. §2701 Cable Subscriber Privacy Protection 47 U.S.C. §551 Family Education Privacy Right Act 20 U.S.C. §1232g(b)(2)(B) Video Tape Rental or Sale Information 18 U.S.C. §2710</p>	<p>concerning— (A) ongoing civil or criminal investigations or proceedings; (B) undercover operations; (C) the identity of confidential sources, including protected witnesses; (D) intelligence or counterintelligence matters; or (E) other matters, the disclosure of which would constitute a serious threat to national security. (2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Attorney General the United determines that such prohibition is</p>
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					<p>necessary to prevent this disclosure of any information described under paragraph (1) or to prevent the significant impairment of interests of the States. (3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs and Judiciary of the Senate and Committees on Governmental Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.” 5 U.S.C. App. 3, Section 8E.</p>
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